

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ERIC R HOOK
Claimant

APPEAL NO. 08A-UI-07019-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPS NOW HEARTLAND LLC
Employer

**OC: 01/06/08 R: 04
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated July 28, 2008, reference 05, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on August 18, 2008. Mr. Hook participated personally. The employer participated by Laura Grawronski, Hearing Representative, and Witness Laura Krasta Kennedy.

ISSUE:

The issue in this matter is whether Mr. Hook is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the claimant last worked for this employer on June 12, 2008. The claimant worked as a general laborer and was paid \$12.00 per hour. Upon completing his most recent assignment, the claimant reported to Temps Now to report the job assignment had ended as required by policy and law. No additional work was available to the claimant that day. Subsequently on or about June 26, 2008, the employer offered Mr. Hook a job assignment to a place of employment where he had previously worked as a temporary employee. When the claimant determined that his start pay would be less than the pay that he had most recently received at the same place of employment, he declined the offer also citing his desire to avoid second shift work, if possible. Mr. Hook has actively and earnestly been seeking work by contacting perspective employers and is registered with other temporary employment services.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The administrative law judge concludes based upon the totality of the evidence in the record that the claimant is able and available for work and has not imposed any limitations which effectively remove him from prompt reemployment in the general labor market.

DECISION:

The representative's decision dated July 28, 2008, reference 05, is hereby affirmed. The claimant is able and available for work. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs